



U.S. Department
of Transportation

**Maritime
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAY 22 2002

The Honorable Max Baucus
Chairman, United States Senate
Committee on Finance
Washington, D.C. 20510-6200

Dear Senator Baucus:

This is in response to your letter dated April 25, 2002, regarding the Maritime Administration's (MARAD) support of Enron Corp. (Enron). Since 1985, MARAD has approved Title XI¹ financing for four separate Enron affiliates operating in the Dominican Republic or Central America: Puerto Quetzal Power Corporation; Smith/Enron Cogeneration Limited Partnership; Empresa Energetica Corinto, Ltd; and Puerto Quetzal Power LLC.

The following is a brief overview of each of the four transactions that resulted in MARAD's approval of Title XI guaranteed obligations and responses keyed to each of the questions contained in your letter.

Puerto Quetzal Power Corporation (PQPC), a Delaware corporation.

On November 13, 1992, PQPC submitted a Title XI application for refinancing a portion of the existing obligations relating to the construction of two U.S. flag barge mounted power plants operating off the coast of Guatemala. On May 16, 1994, MARAD approved the issuance by the company of guarantees in an amount not to exceed \$25 million as part of a co-financing with the International Finance Corporation. MARAD required that PQPC collaterally assign a power purchase agreement and a mortgage on the barges to MARAD and that Enron enter into certain guarantees and undertakings in the event of a default by PQPC. At the time of the commitment, the company was a joint venture between a wholly owned subsidiary of Enron and a wholly owned subsidiary of King Ranch Oil and Gas, Inc. Although Enron chose not to close this transaction and used an alternative source of funding, MARAD established a policy for these types of transactions, which it applied in the three subsequent transactions, of requiring Enron guarantees as credit enhancements and requiring that MARAD receive independent mortgagee status even in co-financed transactions.

¹ The Federal Ship Financing Program (Title XI of the Merchant Marine Act of 1936) provides for a full faith and credit guarantee by the U.S. Government of debt obligations issued by 1) U.S. citizen shipowners for the purpose of financing or refinancing U.S. flag vessels constructed or reconstructed in U.S. shipyards, 2) non U.S. citizen shipowners for the purpose of financing or refinancing foreign flag vessels constructed or reconstructed in U.S. shipyards or 3) U.S. shipyards for the modernization and improvement of their facilities.

Senate Finance Committee

EXHIBIT 5

- A. The total amount of the loan guarantees approved for issuance was up to \$25,000,000, but no guarantees were issued.
- B. The decision to approve the financing was made by former Maritime Administrator, A.J. Herberger.
- C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from PQPC, co-lenders to the project, Enron, other Enron affiliates, and their respective attorneys.
- D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

2. Smith Enron Cogeneration Limited Partnership (Smith Enron), a Turks and Caicos Islands limited partnership.

On March 22, 1995, Smith Enron submitted a Title XI application for assistance relating to the construction of two Panamanian flag barge mounted power plants operating near Puerto Plata in the Dominican Republic. On December 22, 1995, MARAD issued a commitment to guarantee obligations in the amount of \$50,000,000 to Smith Enron. At the time of the commitment, the partnership was composed of Smith Cogeneration Group and wholly owned subsidiaries of Enron. The total cost of the project, including shoreside facilities was \$204.3 million and the project was co-financed with the International Finance Corporation (IFC) (the major participant in the project financing) together with Commonwealth Development Corporation and DEG-Deutsche Investitions-Und-Entwicklungsgesellschaft mbH. Enron and its affiliates provided a \$10 million vessel removal guarantee for the project and an agreement concerning compliance with environmental standards for the project. On February 28, 1996, MARAD issued the guarantees to Smith Enron. The obligations require repayment on a level principal (straight line) basis over 10.5 years beginning on June 15, 1996 and ending December 15, 2006. The total debt outstanding is currently \$27.2 million.

After the closing, this project suffered from power plant defects and from an unreliable payment history with its customer, the Dominican government-owned utility. In turn, these circumstances led to near constant surveillance by the creditors (including MARAD) and to frequent requests from Enron that MARAD grant it lenient treatment by delaying action in the event of a payment default. MARAD has uniformly and firmly rejected these requests.

- A. The total amount of the loan guarantees was \$50,000,000
- B. The decision to approve the financing was made by former Maritime Administrator, A.J. Herberger.
- C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from Smith/Enron, co-lenders to the project, Enron and its affiliates, and their respective attorneys.

- D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

3. Empresa Energetica Corinto Limitada (EECL), a Cayman Islands corporation.

On July 22, 1998, EECL submitted a Title XI application for financing the construction of one barge mounted power plant operating in Corinto, Nicaragua. On December 28, 1998, MARAD issued a commitment to EECL to guarantee obligations in the amount of \$50,000,000. At the time of the Commitment, EECL was a joint venture between a wholly owned subsidiary of Enron and the Centrans Group. On May 3, 1999, EECL issued the guaranteed obligations, which are payable semi-annually on a level debt basis over 11.5 years. The total debt outstanding is currently \$41.34 million.

As additional collateral for the transaction, MARAD required Enron to enter into a purchase agreement which obligated Enron to make certain mandatory deposits into a collateral account in favor of MARAD if Enron's credit rating dropped to a BBB- and to buy out MARAD's position if Enron's credit rating dropped to BB+. When Enron's credit standing began to worsen in late November, 2001, MARAD sent a notice to EECL and Enron stating that mandatory deposits of \$6.3 million were required under the purchase agreement which Enron thereafter paid. A couple of weeks later, when Enron's credit rating dropped to BB+, MARAD sent a demand notice to Enron to purchase MARAD's Note. Shortly thereafter, Enron filed for bankruptcy protection and did not respond to MARAD's demand under the MARAD Note. As a result of Enron's failure to buy out MARAD's position, EECL is being held to certain applicable financial restrictions.

- A. The total amount of the loan guarantees was \$50,000,000.
- B. The decision to approve the financing was made by former Maritime Administrator Clyde J. Hart, Jr.
- C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from EECL, Enron and its affiliates, and their respective attorneys.
- D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

4. Puerto Quetzal Power LLC (PQP), a Delaware limited liability company.

On April 8, 1999, PQP submitted a Title XI application for financing the construction of one barge mounted power plant operating off the coast of Guatemala. The financing included two additional power barges and onshore facilities and was co-financed with the Overseas Private Investment Corporation (OPIC), with OPIC providing \$50 million for refinancing the existing facility and MARAD providing \$73 million for a new vessel. On September 21, 2000, MARAD issued a commitment to PQP to guarantee obligations and on December 15, 2000, PQP issued the guaranteed obligations, which are payable semi-annually on a level principal basis over approximately 12 years. At the time of the

commitment, PQP was a joint venture between various wholly owned subsidiaries of Enron and the Centrans Group. The total debt outstanding is currently \$66.7 million.

As part of this financing, MARAD required a guarantee from Enron for \$28 million of the guaranteed debt. When Enron filed for bankruptcy, MARAD informed PQP that it was in default because the Enron Guarantee was unenforceable. MARAD has informed PQP that until a satisfactory substitute guarantee arrangement is put in place, MARAD will hold more than \$7.5 million of PQP's funds in a collateral account and continue to subject PQP to certain applicable financial restrictions.

- A. The total amount of the loan guarantees was \$73,000,000.
- B. The decision to approve the financing was made by former Acting Maritime Administrator, John E. Graykowski.
- C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from PQP, co-lenders to the project, Enron and its affiliates, and their respective attorneys.
- D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

The following is in response to your request for overall guidance on how Title XI financings are approved, and the criteria for such approval. When a Title XI application is received, it is circulated among various MARAD offices for an in-depth review. Based on the overall completeness and acceptability of the application, a letter is sent to the applicant notifying them of the additional information needed to complete the application and other issues affecting MARAD's review. MARAD reviews the application to insure among many other things, that (1) the company has demonstrated that it has sufficient equity and working capital to consummate the transaction, (2) the business plan and project is economically sound, (3) all appropriate parties entering into the transaction such as the shipowner, charterer, guarantor, shipyard etc. as appropriate, are financially sound, (4) the project is environmentally sound, (5) the vessel design or shipyard modernization (as appropriate), actual cost, and shipyard construction contract are acceptable, (6) the vessel operator's capabilities are acceptable, (7) the collateral package offered by the applicant is acceptable, (8) the terms and conditions of the financing are acceptable, and (9) the project, transaction and all documents are legally sound and sufficient and in compliance with all applicable statutes, regulations and MARAD policy. If it is determined that the project meets MARAD's requirements, and adequate funds are available, a report is prepared and reviewed by all of the offices involved, and a recommendation to issue a Letter Commitment is submitted to the Maritime Administrator. The Maritime Administrator has the sole authority to approve a project, regardless of the dollar amount or type of project. If the Maritime Administrator approves the project, a Letter Commitment is issued and forwarded to the applicant.

In conducting financial viability determinations, MARAD relies in part on audited financial statements prepared in accordance with U.S. Generally Accepted Accounting


Principles (GAAP), or reconciled to GAAP if the business entity is operating under foreign accounting standards. Generally, audited financial statements (with complete footnote disclosures) are required for all significant participants in the transaction for the three most recent years. MARAD also reviews the company's cash flow projections, interim financial statements, past history with Title XI, banking arrangements (including current credit facilities, lines of credit, and existing loan agreements) pro forma balance sheet, marketing studies, business plan and credit reports and ratings, as necessary. In the case of export transactions, such as the three closed Enron financings described above, MARAD also determines whether the countries in which the shipowner has its chief executive office or a substantial portion of its assets present acceptable financial and legal risks to MARAD. In this respect, MARAD's determination is based on confidential risk assessments provided by the Inter-Agency Country Risk Assessment System. After reviewing all of this information, as well as the overall collateral package (charter, letters of credit, guarantees, special reserve accounts, outside sponsor support, etc), and conducting additional due-diligence as necessary, a decision is made as to the financial soundness of the applicant and the project as a whole.

Finally, with respect to your question regarding the impact of Enron's bankruptcy on MARAD, it is noted that all three projects which closed are currently meeting their debt service obligations. Both the PQP and EECL project appear to be in good financial health from a debt perspective, but are in technical default because of the bankruptcy of Enron and the inability of their guarantors to perform. Smith Enron has had and is currently experiencing significant operational, profitability and debt service problems and it too is in technical default. The total liability faced by MARAD for all three projects combined is approximately \$135 million in outstanding principal, none of which is a direct debt of an Enron entity in bankruptcy. This liability would be offset by any recoveries MARAD receives from disposition of its collateral and demands made under the credit enhancements provided by Enron. As a result of the bankruptcies, it is unlikely that MARAD will realize any significant collections in the event it becomes necessary to make demands on the Enron credit enhancements (approximately \$73 million).

I hope that this information is responsive to your request. If you need any additional information, or would like to make arrangements for the review of all application and related material, please contact Ms. Jean McKeever, Associate Administrator for Shipbuilding at 202-366-5737.

An identical letter has been sent to Senator Grassley

Sincerely,



Bruce J. Carlton
Acting Deputy Maritime Administrator